IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6201 of 2007()

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CRIME NO.342/99 OF KALADY POLICE STATION.

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PETITIONER/ACCUSED

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JAMES @ SABASTIAN,S/O.JOSEPH, AGED36,
THEKKAN HOUSE,SEBIYOOR DESOM,
MALAYATOOR P.O.,ERNAKULAM DISTRICT.

BY ADV. SRI.JAIJI ITTEN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

2. THE SUB INSEPCTOR OF POLICE,
KALADY, POLICE STATION.(CRIME 342/1999)

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No.6201 OF 2007**

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**Dated this the 8th day of October, 2007**

**ORDER**

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act as also the provisions of the Arms Act. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings was registered. The petitioner was not available for committal. The case against the petitioner has been split up. The case against the co-accused has already been committed. Coercive processes have been issued against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate as also steps under Secs.82 and 83 of the Cr.P.C. taken by the learned Magistrate chasing him.

2. According to the learned counsel for the petitioner,

the petitioner is absolutely innocent. His absence was not wilful or deliberate. He was not informed of and had no knowledge of the proceedings initiated against him. The petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. Notice was given. The learned Public Prosecutor only submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that

any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

**Sd/-**

**(R. BASANT, JUDGE)**

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